



July 6, 1999

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR99-1880

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125719.

The City of Corpus Christi (the “city”) received a request for information pertaining to a particular personnel matter. You have identified one document that is responsive to this request. You contend that the names of the witnesses listed in this document are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. We have considered the exception you claim and reviewed the document at issue.

The city received the request for information on April 6, 1999, but did not seek an open records decision from this office until April 22, 1999, more than ten business days after the city received the request for information. The city’s delay in this matter results in the presumption that the requested information is public. See Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 generally constitutes a compelling reason.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information considered confidential under the common-law right to privacy. Information is protected by the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly

objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Therefore, the city must redact the names of the victim and witnesses from the document at issue before publicly disclosing it.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 125719

Encl. Submitted document

cc: Mr. Todd White
Publishing Department
1201 Leopard Street
Corpus Christi, Texas 78401
(w/o enclosures)